

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Tuesday, January 22, 2013

TIME: 8:00 A.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Bair, Vice Chairman Guthrie, Senators Brackett, Tippetts, Rice, Nonini, Patrick, Durst and Buckner-Webb

ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Bair** called the meeting to order at 8:03 a.m.

PASSED THE GAVEL: Chairman Bair passed the gavel to Vice Chairman Guthrie to present the pending rules for the consideration of the Committee. **Vice Chairman Guthrie** thanked the Chairman and invited the first speaker to the podium.

DOCKET NO. 02-0408-1201 **Vice Chairman Guthrie** introduced **Marv Patten**, Deputy, Bureau Chief of the Animal Industries Division, Idaho State Department of Agriculture (ISDA), who outlined changes to the pending rules Governing Grade A Milk and Milk Products:

- The somatic cell count standard is changed from 500,000 per mL to 400,000 per mL for marketability;
- the temporary rule is changed to a permanent rule; and
- four publications are incorporated by reference to include the most recent dates.

Marv Patten stood for questions.

Senator Durst asked what are somatic cells and why was the cell count reduced. **Mr. Patten** answered the somatic cell count is an indication of the cow's udder health, and is actually a count of leukocytes (white blood cells) that increase in response to pathogenic bacteria.

TESTIMONY: **Vice Chairman Guthrie** introduced **Bob Naerebout**, Executive Director of the Idaho Dairyman's Association and a registered lobbyist, who spoke in support of the rule. He said the most controversial change of this rule was reducing the somatic cell count; their board adopted and endorsed these changes. Chobani accepts a cell count of 300,000 per mL or less, which is becoming the trend of the industry.

Senator Durst asked about opening access to out-of-state milk and concerns about purity and meeting this standard. **Bob Naerebout** responded that out-of-state milk must meet the standards of Idaho and the count of 400,000 per mL.

MOTION: **Senator Tippetts** moved to approve **Docket No. 02-0408-1201**, **Chairman Brackett** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
02-0419-1201**

Vice Chairman Guthrie introduced **Scott Leibsle**, Deputy State Veterinary, Bureau Chief of the Animal Industries Division, Idaho State Department of Agriculture (ISDA), who outlined the changes to the Rules Governing Domestic Cervidae:

- Acronym and definition additions
- Allow Administrator to grant exemptions to the change of ownership tuberculosis (TB) testing requirements for domestic cervidae on a case-by-case basis.

Negotiated rulemaking was conducted. There were no visitors and no public comments. **Mr. Leibsle** stood for questions.

Senator Tippetts asked why the administrator is given such wide authority to grant these exceptions and why was it not written to be more specific? **Mr. Leibsle** said the rule was written to reflect the most common anticipated application of the rule.

Senator Nonini asked for examples of why this exception was needed. **Mr. Leibsle** said this change is in response to the industry's petition and in anticipation of a change of ownership of a domestic cervidae farm.

MOTION:

Senator Nonini moved to approve **Docket No. 02-0419-1201**, **Senator Rice** seconded the motion. **Vice Chairman Guthrie** called for any testimony or further discussion.

Senator Durst asked if a new elk is brought into the TB free herd and infects it, what is the liability for the state? **Mr. Leibsle** answered that the exemption would only be granted after the Administrator examined the testing status. The state follows federal protocols established for dealing with TB in a herd.

Vice Chairman Guthrie called for a vote. The motion carried by **voice vote**.

**DOCKET NO.
02-0421-1201**

Vice Chairman Guthrie introduced **Mr. Leibsle** again, who outlined the changes to the Rules Governing the Importation of Animals:

- Acronym and definition additions and changes;
- the requirements for permits of domestic bison are included in § 202;
- clarify the Brucellosis testing; only a single blood sample is required to take from an elk, but two different tests need to be performed;
- the Red Deer Genetic Factor testing exemptions will be allowed from states with an approved prevention program;
- the moving of cervidae will now include United States Department of Agriculture (USDA) Exhibitors Permitted Facilities and animals will not need to be retested for TB; and
- importing of fish will now include invasive species as listed.

Negotiated rulemaking was conducted, there were no visitors and no public comments. **Mr. Leibsle** stood for questions.

Chairman Bair asked for a brief history of the Red Deer Genetic Factor and how it affects the cervidae industry. **Mr. Leibsle** replied that it is an artificial breeding program. Red Deer have a impressive rack of horns, and by incorporating into the genetic line, this could make for a more impressive trophy animal. To maintain the pure genetic line of elk, Idaho does not allow any species with this genetic factor imported into the state. **Chairman Bair** asked for an example of an Association of Zoos and Aquariums (AZA) and USDA facilities. **Mr. Leibsle** responded these are zoos with an accreditation status for testing. **Chairman Bair** asked if this was done so that is was easier to move animals between zoos. **Mr. Leibsle** answered yes.

MOTION:

Senator Brackett moved to approve **Docket No. 02-0421-1201**, **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
02-0303-1201**

Vice Chairman Guthrie introduced **Ben Miller**, Agricultural Bureau Chief, Idaho State Department of Agriculture, who outlined the Rules Governing Pesticide and Chemigation Use and Application:

- require licensed applicators to attend specific training every three years or pass the new specific State Soil Fumigation exam to legally use the soil fumigation products; and
- proposal to add a third category to the Private Applicators licenses to make the rules consistent with the rules for Professional licensees who purchase and apply soil fumigation products

Negotiated rulemaking was conducted. There were no visitors and no public comments, and recommend by the Agency's Licensing Committee **Mr. Miller** stood for questions.

Senator Durst asked if these regulations include buffer zones? **Mr. Miller** replied that the buffer zones are covered on every label and is part of the regulation.

Senator Patrick asked how the two-year certification test correspond with the rotating three-year license. **Mr. Miller** replied that private applicators must renew their licenses every two years. If their recertification points are kept up, the U.S. Environmental Protection Agency (EPA) would allow that to fall under it. **Senator Patrick** asked if there was a buffer zone for soil injection applications. **Mr. Miller** replied that all labels have the buffer zone requirements with different sizes for different types of applications.

Chairman Bair asked what would happen if the state did not require this level of licensing for fumigation? **Mr. Miller** replied that this requires taking the EPA test, which is a more difficult process and test. With the newly approved test, this can now be given at the local level.

Senator Durst thanked the department for their efforts in allowing this testing at the local level.

MOTION:

Senator Durst moved, seconded by **Chairman Bair**, to adopt **Docket No. 02-0303-1201**. The motion carried by unanimous **voice vote**.

**DOCKET NO.
02-0633-1201**

Vice Chairman Guthrie introduced **Andrew Smyth**, Program Specialist, Organic and Retail Potato and Brands Program, Agricultural Inspections Division, Idaho State Department of Agriculture, who outlined the changes to the Organic Food Product Rules:

- change to the state organic certification seal that will help reduce printing costs for the organic operations. Operations certified prior to July 1, 2012, may continue to use the old seal;
- a new materials registration list for verification of compliance to national standards; and
- allow manufacturers access to the program's review process to be able to sell their materials to an organic operation. Upon approval, they can use a newly created seal and be published on the approved products list. The fee structure follows that of organic certification fees

Negotiated rulemaking was conducted on July 16, 2012, and presented the rules to the Organic Advisory Committee on October 19, 2012, and received positive comments on the changes. **Mr. Smyth** stood for questions.

TESTIMONY: **Vice Chairman Guthrie** introduced **Tanya Holten**, from Ida-Ore, a company that mines the organic product, zeolite. Their company is in favor of the implementation a new seal program in Idaho and the fee regulations and material review for the products list publication. This allows their company to get certification in Idaho instead of using firms outside the state, as well as verification of organic products. **Ms. Holten** stood for questions.

TESTIMONY: **Vice Chairman Guthrie** introduced **Jennifer Miller**, a consumer from Boise who participated in the ISDA Idaho Organic Food Advisory Council and supports this new rule. The changes to the organic seal will enhance promotion of the industry in Idaho, allows flexibility to the producers using the old seal who can continue to use the older materials and appreciates the published list of materials for increased clarity. **Ms. Miller** stood for questions.

TESTIMONY: **Vice Chairman Guthrie** introduced **Clay Eriskine**, an organic farmer that runs the Peaceful Belly Farm, a certified organic vegetable farm, and who serves on the ISDA Organic Advisory Council. **Mr. Eriskine** is in favor of having a source here in Idaho that makes it easier in identifying products from Idaho. The label is much clearer and more in line with industry standards. **Mr. Eriskine** stood for questions.

Chairman Bair asked where does he get the information on his products being used on his farm, since this list is just being created here in Idaho. **Mr. Eriskine** responded he uses the Organic Materials Review Institute (OMRI) list to verify if a product is organic.

Mr. Smyth returned to the podium to answer a question from **Chairman Bair** who questioned the annual fees in comparison to the annual sales, and the department arrived at those numbers? **Mr. Smyth** responded the fees are actually fee caps. The first year of the program a company with a previous approval by OMRI or Washington State will pay \$200, and new company up to \$500 for initial review. The Department will be better able to quote application fees, once it is determined just how long it will take to perform the activities. The department does not anticipate charging the maximum fee. **Chairman Bair** asked if they will use the Washington State University list of products as the basis. **Mr. Smyth** answered yes. They will continue to recognize Washington State authority if that product is approved by them. **Chairman Bair** asked if the department tests to make sure the labels reflect the product. **Mr. Smyth** answered that it is a processed based verification and they may test but they do not test every product. **Chairman Bair** asked how the department determines which products are chosen to be tested? **Mr. Smyth** answered: if the department suspects the company may not be disclosing all the product ingredients, they may choose to test it or perform an audit for verification of sufficient products purchased to justify what they are selling. **Chairman Bair** asked if the department has the resources to do the audits and testing or if this require more personnel. **Mr. Smyth** answered that the department is sufficiently staffed.

Senator Rice questioned why would we have a fee that discriminates so heavily against a newcomer to the industry? **Mr. Smyth** answered the fees are based on the annual sale of the product, and typically, the more sales of the product, the longer the review process takes. These fees were set to recoup the cost of running the program and not to generate revenue. The fees are caps and not necessarily what will be charged. **Senator Rice** asked why those companies with prior approval get the \$200 renewal fee, even though there is no indication of maintaining the certification status, and the company that has no prior approval pay more. What happens if the prior approved company does not maintain this status? **Mr. Smyth** answered that if the company with prior approval does not maintain their approval status, they will be charged according to the fee structure.

Senator Brackett asked what if the sales as outlined in the fee chart in § 201.04.b. were exactly \$75,000? Shouldn't line three of Annual Sales be \$75,001 and above? Is this a misprint? **Mr. Smyth** replied these fees are caps; a company that makes \$75,000 would not necessarily be charged the \$2,500 fee, and one that makes \$75,001 be charged the \$5,000 fee. **Senator Brackett** asked if the annual sales are exactly \$75,000, how does the department decide which amount to charge? This is not clear on the table. **Mr. Smyth** answered that since the sales cap at that fee, it would probably fall under the smaller amount. **Senator Brackett** responded that it needs to be more clear.

Senator Nonini asked, what are the expected costs for the inspections and travel fees, and how many inspections are anticipated? **Mr. Smyth** said in addition to the application fees, there are inspection fees. Inspections are done annually for the organic certification and the fees are comprised of an hourly rate, travel time, report time and testing fees. **Senator Nonini** asked if this was for new inspections and testing. **Mr. Smyth** replied yes. **Senator Nonini** asked how many new inspections are anticipated. **Mr. Smyth** responded approximately twelve a year.

Senator Rice asked if an inspector was not available from the nearest office, would the Department charge travel time from the farther office? **Mr. Smyth** replied the department would adjust the charges to the nearest office.

Senator Patrick asked how many inspections were done in the past. **Mr. Smyth** replied the staff performs about 200 inspections a year, and he performed 40.

Senator Nonini asked if Mr. Eriskine would yield for a question. **Senator Nonini** asked what affect these new fees would have to his business. **Mr. Eriskine** stated that as a producer he has his own fee structure. This rule is for a certifier for product registration.

Senator Durst commented that he understands the need for a tiered fee schedule, but his overriding concern is the lack of precision in the calculating the fees.

Chairman Bair talked about a motion to hold the fee rule in committee pending receipt of clarification on issues addressed by the committee.

Vice Chairman Guthrie introduced **Brian Oakley**, Deputy Director, Idaho State Department of Agriculture, who requested to speak to clarify these concerns:

- the \$75,00 fee in table on page 16 is an oversight and will be fixed;
- this type of complex fee structure has never been presented to the committee as a fee rule, and used the Idaho Preferred program fee structure as the basis, which gives flexibility for increasing costs;
- the department is not in a position to absorb the additional costs of the organics program, and since the actual costs are unknown at this time the fees were set to cover costs and not to generate revenue; and
- this is a voluntary program, and producers are not required to use it.

Mr. Oakley stood for questions.

Chairman Bair asked why the tiered fee structure was based on gross sales. **Mr. Oakley** replied that this fee structure was set up like the other certification programs and one that participants understand. **Chairman Bair** asked if the gross sales were based on one product or more. **Mr. Oakley** replied on the total gross sales of the company.

Senator Durst asked shouldn't the department return after the program has run for a year when they could better align the fees with the actual costs? **Mr. Oakley** said more details could be provided on how the program works. He emphasized that they did negotiate this rule with the industry and the Advisory Committee, but understood the concerns of this committee regarding the fee structure, and would be willing to come back to report on how the program works if the committee passes this rule.

Chairman Bair thanked Mr. Oakley for his time to clarify this issue. He suggested § 201.04.b. on page 16, be stricken and the department come back after the session is over with a temporary rule that bases that fee on a per product registration and not volume, and asked if the department would be able to move forward with the product registration program and function until they could come back with a better portion of that rule. **Mr. Oakley** replied they could run the program for one year and come back with a fee structure that would meet the expectations of the committee.

MOTION: **Chairman Bair** moved to approve **Docket No. 02-0633-1201** with the following exception: § 201.04.b. on page 16 of the 2013 Pending Fee Rule Book be stricken from the rule. **Senator Durst** seconded the motion.

Senator Rice commented that there needs to be more clarification on the travel time charges regarding inspections done from the nearest office versus any office the department chooses to alleviate any potential for abuse.

Chairman Bair clarified his intentions regarding the motion and stated that it was not punitive or intended to undo the negotiated rulemaking. The tiered fee structure is of concern, but the department will be able to function and begin the registration fee process.

The motion carried by unanimous **voice vote**.

DOCKET NO. 02-0214-1201 **Vice Chairman Guthrie** introduced **Kevin Merritt**, Section Manager, Bureau of Weights and Measures, Idaho State Department of Agriculture, who outlined the changes to the Rules for Weights and Measures. This pending rule is for the annual incorporation for reference the 2013 edition of the National Institute of Standards and Technology Handbook 44, Specifications, Tolerances and other Technical Requirements for Weighing and Measuring Devices. **Mr. Merritt** stood for questions.

MOTION: **Senator Patrick** moved to approve **Docket No. 02-0214-1201**. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 46-0101-1201 **Vice Chairman Guthrie** introduced **Carol Youtz**, acting Executive Director of the Board of Veterinary Medicine who outlined the changes to the Rules of the State of Idaho Board of Veterinary Medicine. Negotiated rulemaking was used and no comments were received. The proposed changes are:

- adding the board's website and email address, authorize convenient methods of filing and incorporate by reference an updated version of the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association (AVMA), as adopted and revised November 2010;
- allow the board to fully recover expenses incurred when applications for certifications of Veterinary Technicians are withdrawn or denied; and
- streamline and clarify certain obligations and procedures required of Certified Euthanasia Agencies and Technicians, eliminate any potential ambiguity for grounds for discipline for agencies or technicians and clarify requirements for inspection deficiencies.

Ms. Youtz stood for questions.

Senator Rice asked for clarification on the addition in § 206 (09)(b), and the inclusion of alcohol as a reason for disciplinary action. Does this apply to public intoxication? **Ms. Youtz** responded that this rule applies only for new applicants. Applicant's background checks were returned with Driving Under the Influence (DUI) convictions, even though the question on the application was marked with a no. This program is heavily regulated because of the lethal drugs. Since these technicians are not medical professionals and have one day of training, if there is the habit of public intoxication and driving, this shows a lack of judgement. **Senator Rice** asked if there are federal regulations regarding drug and alcohol use, and if they lied about the conviction; wouldn't that fall under fraud? **Ms. Youtz** answered federal guidelines from the American Veterinary Medical Association are used that address the use of chemical substances as well the use of alcohol. Lying about the convictions falls under fraud as well.

Senator Patrick asked if Idaho was the only state to implement this change regarding a DUI conviction. **Ms. Youtz** answered that other states that have the Euthanasia program have very strict guidelines about alcohol use if the person has a DUI conviction. **Senator Patrick** asked what if they have a DUI conviction from another state? **Ms. Youtz** replied that the criminal background check is a national check and DUI convictions in other states will show up.

Vice Chairman Guthrie would marijuana use from Oregon show up? **Ms. Youtz** said it would not show up as it is not a crime.

Senator Rice asked about weekend use of marijuana. How is this handled? **Ms. Youtz** replied that this rule only applies for applicants and a background check is only done at that time. If marijuana use is suspected by their employer, then it must be reported, but this rule only applies to applicants.

Senator Durst questioned the nonrefundable fees if no services were provided.

Senator Patrick prefaced his motion with a comment regarding the nonrefundable fees that reference "identical changes made in statute" and would like to have those statutes be identified in this rule.

MOTION: **Senator Brackett** moved to approve **Docket No. 46-0101-1201** . **Chairman Bair** seconded the motion. The motion carried by **voice vote**

ADJOURNED: **Chairman Bair** adjourned the meeting at 9:36 a.m.

Senator Bair
Chairman

Denise McNeil
Secretary